

**JUNE 20, 2008**MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURTIN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

AUSTIN FERGE and DOUGLAS WISE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No.
	)	
FEDERAL EXPRESS CORPORATION,	)	
a Delaware corporation, d/b/a FEDEX	)	
EXPRESS, and FEDEX FREIGHT	)	
EAST, INC., an Arkansas corporation,	)	
	)	
Defendants.	)	

**08 C 50110****JUDGE KAPALA  
MAGISTRATE JUDGE MAHONEY**COMPLAINTCOUNT I

NOW COMES the Plaintiff, AUSTIN FERGE, by his attorneys, CLARK, JUSTEN & ZUCCHI, LTD., and for his Complaint against the Defendant, FEDERAL EXPRESS CORPORATION, a Delaware corporation, d/b/a FEDEX EXPRESS, states as follows:

1. This Court has jurisdiction of this matter based upon diversity of citizenship as contained in 28 United States Code §1332, in that the Plaintiff, AUSTIN FERGE, is a citizen of the State of Illinois and the Defendant, FEDERAL EXPRESS CORPORATION, a Delaware corporation, d/b/a FEDEX EXPRESS, is incorporated in the State of Delaware, and is a citizen of and has its principal place of business in the State of Tennessee. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$75,000.00.

2. That on May 29, 2008, and for some time prior thereto, the

Defendant, FEDERAL EXPRESS CORPORATION, a Delaware corporation, d/b/a FEDEX EXPRESS, was a Delaware corporation, engaged in the trucking and freight business and traveling in and through the State of Illinois, County of Winnebago and City of Rockford in the course of doing business.

3. That on May 29, 2008, at all times pertinent hereto, Brad Swinson, was an employee, agent or apparent agent of FEDERAL EXPRESS CORPORATION, a Delaware corporation, d/b/a FEDEX EXPRESS

4. That on or about May 29, 2008, the Plaintiff, AUSTIN FERGE, was the driver of a 1991 Oldsmobile passenger vehicle traveling westbound on Jefferson Street in the City of Rockford, County of Winnebago and State of Illinois.

5. At the foregoing time and place, a FEDERAL EXPRESS CORPORATION truck operated by Brad Swinson, was proceeding south on Second Street crossing its intersection with Jefferson Street, in the City of Rockford, County of Winnebago and State of Illinois,

6. At the aforesaid time and place, it ran a red light at the same time the Plaintiff's vehicle, proceeding west on Jefferson on the green light entered said intersection, colliding with the FEDERAL EXPRESS CORPORATION, truck and in the process of that collision, going underneath the trailer of the FEDERAL EXPRESS CORPORATION truck.

7. That on May 29, 2008, immediately before the collision the Defendant, FEDERAL EXPRESS CORPORATION'S, truck being driven by Brad Swinson, had a traffic control device controlling his direction of travel which was red.

8. That on May 29, 2008, the Plaintiff's vehicle was proceeding west on Jefferson Street and proceeded westbound with a green light on the traffic control device and entered said intersection colliding with the FEDERAL EXPRESS CORPORATION, truck and in the process of that collision was forced underneath the trailer portion of the FEDERAL EXPRESS CORPORATION tractor/trailer.

9. That on May 29, 2008, at said time and place the Defendant, FEDERAL EXPRESS CORPORATION by and through its' employee, agent or apparent agent, Brad Swinson, failed to stop for the traffic control device controlling its lane of traffic, which was red, and struck Plaintiff's vehicle.

10. That FEDERAL EXPRESS CORPORATION by and through its employee, agent or apparent agent Brad Swinson, was then and there negligent in one or more of the following respects:

a. Failed to obey the instructions of the official traffic control device controlling southbound traffic on North Second Street in violation of 625 ILCS 5/11-305(a);

b. Failed to decrease his speed when approaching and crossing an intersection contrary to and in violation of 625 ILCS 5/11-601(a).

c. Failed to decrease the his speed to avoid colliding with the Plaintiff's vehicle or other vehicles legally on the highway in violation of 625 ILCS 5/11-601(a);

d. Drove his vehicle at a speed which was greater than reasonable and proper with regard to traffic conditions and use of the highway in violation of 625 ILCS 5/11-601(a);

e. Failed to keep a proper lookout for traffic lawfully upon the roadway directly in front of his vehicle or to the east of his motor.

f. Failed to give an audible warning with the horn when such warning was reasonable and necessary insure safety in violation of 625 ILCS 5/12-601(a)

g. Failed to keep his vehicle under proper control.

11. That as a direct and proximate result of one or more of the aforesaid negligent acts and/or omissions of the Defendant, FEDERAL EXPRESS CORPORATION, its motor vehicle collided with the motor vehicle of the Plaintiff, AUSTIN FERGE, resulting in the Plaintiff, AUSTIN FERGE, sustaining severe and permanent injuries, both externally and internally, has caused him great pain and suffering and continues to cause great pain and suffering, and will cause him great pain and suffering in the future. Further, Plaintiff, AUSTIN FERGE, has become liable for large sums of money for medical expenses in endeavoring to be cured and healed of his injuries, had caused and continues to cause him to be impaired from going about his daily affairs as a result of his injuries and sustained a loss of earnings and a diminished earning capacity.

WHEREFORE, the Plaintiff, AUSTIN FERGE, prays for judgment against the Defendant, FEDERAL EXPRESS CORPORATION, a Delaware corporation, d/b/a FEDEX EXPRESS, in a sum in excess of \$75,000.00 plus costs of suit.

## COUNT II

NOW COMES the Plaintiff, AUSTIN FERGE, by his attorneys, CLARK, JUSTEN & ZUCCHI, LTD., and for his Complaint against the Defendant, FEDEX FREIGHT EAST, INC., an Arkansas corporation, states as follows:

1. This Court has jurisdiction of this matter based upon diversity of citizenship as contained in 28 United States Code §1332, in that the Plaintiff, AUSTIN FERGE, is a citizen of the State of Illinois and the Defendant, FEDEX FREIGHT EAST, INC., is incorporated in the State of Arkansas, and is a citizen of and has its principal

place of business in the State of Arkansas. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$75,000.00.

2. That on May 29, 2008, and for some time prior thereto, the Defendant, FEDEX FREIGHT EAST, INC., was an Arkansas corporation, engaged in the trucking and freight business and traveling in and through the State of Illinois, County of Winnebago and City of Rockford in the course of doing business.

3. That on May 29, 2008, at all times pertinent hereto, Brad Swinson, was an employee, agent or apparent agent of FEDEX FREIGHT EAST, INC.

4. That on or about May 29, 2008, the Plaintiff, AUSTIN FERGE, was the driver of a 1991 Oldsmobile passenger vehicle traveling westbound on Jefferson Street in the City of Rockford, County of Winnebago and State of Illinois.

5. At the foregoing time and place, a FEDEX FREIGHT EAST, INC., truck operated by Brad Swinson, was proceeding south on Second Street crossing its intersection with Jefferson Street, in the City of Rockford, County of Winnebago and State of Illinois,

6. That at the aforesaid time and place it ran a red light at the same time the Plaintiff's vehicle, proceeding west on Jefferson on the green light entered said intersection, colliding with the FEDEX FREIGHT EAST, INC., a Delaware corporation, truck and in the process of that collision, going underneath the trailer of the FEDEX FREIGHT EAST, INC., truck.

7. That on May 29, 2008, and immediately before the collision the Defendant, FEDEX FREIGHT EAST, INC.'s, truck being driven by Brad Swinson, had a traffic control device controlling his direction of travel which was red.

8. That on May 29, 2008, the Plaintiff's vehicle was proceeding west on Jefferson Street and proceeded westbound with a green light on the traffic control device and entered said intersection colliding with the FEDEX FREIGHT EAST, INC., truck and in the process of that collision was forced underneath the trailer portion of the FEDEX FREIGHT EAST, INC., tractor/trailer.

9. That on May 29, 2008, at said time and place the Defendant, FEDEX FREIGHT EAST, INC., by and through its' employee, agent or apparent agent, Brad Swinson, failed to stop for the traffic control device controlling its lane of traffic, which was red, and struck Plaintiff's vehicle.

10. That FEDEX FREIGHT EAST, INC., by and through its employee, agent or apparent agent Brad Swinson, was then and there negligent in one or more of the following respects:

a. Failed to obey the instructions of the official traffic control device controlling southbound traffic on North Second Street in violation of 625 ILCS 5/11-305(a);

b. Failed to decrease his speed when approaching and crossing an intersection contrary to and in violation of 625 ILCS 5/11-601(a).

c. Failed to decrease the his speed to avoid colliding with the Plaintiff's vehicle or other vehicles legally on the highway in violation of 625 ILCS 5/11-601(a);

d. Drove his vehicle at a speed which was greater than reasonable and proper with regard to traffic conditions and use of the highway in violation of 625 ILCS 5/11-601(a);

e. Failed to keep a proper lookout for traffic lawfully upon the roadway directly in front of his vehicle or to the east of his motor.

f. Failed to give an audible warning with the horn when such warning was reasonable and necessary insure safety in violation of 625 ILCS 5/12-601(a)

g. Failed to keep his vehicle under proper control.

11. That as a direct and proximate result of one or more of the aforesaid negligent acts and/or omissions of the Defendant, FEDEX FREIGHT EAST, INC., its motor vehicle collided with the motor vehicle of the Plaintiff, AUSTIN FERGE, resulting in the Plaintiff, AUSTIN FERGE, sustaining severe and permanent injuries, both externally and internally, has cause him great pain and suffering and continues to cause great pain and suffering, and will cause him great pain and suffering in the future. Further, Plaintiff, AUSTIN FERGE, has become liable for large sums of money for medical expenses in endeavoring to be cured and healed of his injuries, had caused and continues to cause him to be impaired from going about his daily affairs as a result of his injuries and has sustained a loss of earnings and a diminished earning capacity.

WHEREFORE, the Plaintiff, AUSTIN FERGE, prays for judgment against the Defendant, FEDEX FREIGHT EAST, INC., an Arkansas corporation, in a sum in excess of \$75,000.00 plus costs of suit.

### COUNT III

NOW COMES the Plaintiff, DOUGLAS WISE, by his attorneys, CLARK, JUSTEN & ZUCCHI, LTD., and for his Complaint against the Defendant, FEDERAL EXPRESS CORPORATION, a Delaware corporation, d/b/a FEDEX EXPRESS, states as follows:

1. This Court has jurisdiction of this matter based upon diversity of citizenship as contained in 28 United States Code §1332, in that the Plaintiff, DOUGLAS WISE, is a citizen of the State of Illinois and the Defendant, FEDERAL EXPRESS CORPORATION, a Delaware corporation, d/b/a FEDEX EXPRESS, is incorporated in the State of Delaware, and is a citizen of and has its principal place of business in the

State of Tennessee. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$75,000.00.

2. That on May 29, 2008, and for some time prior thereto, the Defendant, FEDERAL EXPRESS CORPORATION, a Delaware corporation, d/b/a FEDEX EXPRESS, was a Delaware corporation, engaged in the trucking and freight business and traveling in and through the State of Illinois, County of Winnebago and City of Rockford in the course of doing business.

3. That on May 29, 2008, at all times pertinent hereto, Brad Swinson, was an employee, agent or apparent agent of FEDERAL EXPRESS CORPORATION, a Delaware corporation, d/b/a FEDEX EXPRESS

4. That on or about May 29, 2008, the Plaintiff, DOUGLAS WISE, was a passenger in a 1991 Oldsmobile passenger vehicle being operated by the Plaintiff, AUSTIN FERGE, traveling westbound on Jefferson Street in the City of Rockford, County of Winnebago and State of Illinois.

5. At the foregoing time and place, a FEDERAL EXPRESS CORPORATION truck operated by Brad Swinson, was proceeding south on Second Street crossing its intersection with Jefferson Street, in the City of Rockford, County of Winnebago and State of Illinois,

6. At the aforesaid time and place, said truck ran a red light at the same time the Plaintiff's vehicle, proceeding west on Jefferson on the green light, entered said intersection, colliding with the FEDERAL EXPRESS CORPORATION, truck and in the process of that collision, going underneath the trailer of the FEDERAL EXPRESS CORPORATION truck.



7. That on May 29, 2008, immediately before the collision the Defendant, FEDERAL EXPRESS CORPORATION'S, truck being driven by Brad Swinson, had a traffic control device controlling his direction of travel which was red.

8. That on May 29, 2008, the vehicle in which the Plaintiff, DOUGLAS WISE, was a passenger was proceeding west on Jefferson Street and proceeded westbound with a green light on the traffic control device and entered said intersection colliding with the FEDERAL EXPRESS CORPORATION, truck and in the process of that collision was forced underneath the trailer portion of the FEDERAL EXPRESS CORPORATION tractor/trailer.

9. That on May 29, 2008, at said time and place the Defendant, FEDERAL EXPRESS CORPORATION by and through its' employee, agent or apparent agent, Brad Swinson, failed to stop for the traffic control device controlling its lane of traffic, which was red, and struck the vehicle in which the Plaintiff, DOUGLAS WISE, was a passenger..

10. That FEDERAL EXPRESS CORPORATION by and through its employee, agent or apparent agent Brad Swinson, was then and there negligent in one or more of the following respects:

a. Failed to obey the instructions of the official traffic control device controlling southbound traffic on North Second Street in violation of 625 ILCS 5/11-305(a);

b. Failed to decrease his speed when approaching and crossing an intersection contrary to and in violation of 625 ILCS 5/11-601(a).

c. Failed to decrease the his speed to avoid colliding with the Plaintiff's vehicle or other vehicles legally on the highway in violation of 625 ILCS 5/11-601(a);

d. Drove his vehicle at a speed which was greater than reasonable and proper with regard to traffic conditions and use of the highway in violation of 625 ILCS 5/11-601(a);

e. Failed to keep a proper lookout for traffic lawfully upon the roadway directly in front of his vehicle or to the east of his motor.

f. Failed to give an audible warning with the horn when such warning was reasonable and necessary insure safety in violation of 625 ILCS 5/12-601(a)

g. Failed to keep his vehicle under proper control.

10. That as a direct and proximate result of one or more of the aforesaid negligent acts and/or omissions of the Defendant, FEDERAL EXPRESS CORPORATION, its motor vehicle collided with the motor vehicle being operated by the Plaintiff, AUSTIN FERGE, in which the Plaintiff, DOUGLAS WISE, was a passenger, resulting in the Plaintiff, DOUGLAS WISE, sustaining severe and permanent injuries, both externally and internally, has cause him great pain and suffering and continues to cause great pain and suffering, and will cause him great pain and suffering in the future. Further, Plaintiff, DOUGLAS WISE, has become liable for large sums of money for medical expenses in endeavoring to be cured and healed of his injuries, had caused and continues to cause him to be impaired from going about his daily affairs as a result of his injuries and has sustained diminished earning capacity.

WHEREFORE, the Plaintiff, DOUGLAS WISE, prays for judgment against the Defendant, FEDERAL EXPRESS CORPORATION, a Delaware corporation, d/b/a FEDEX EXPRESS, in a sum in excess of \$75,000.00 plus costs of suit.

#### COUNT IV

NOW COMES the Plaintiff, DOUGLAS WISE, by his attorneys, CLARK, JUSTEN & ZUCCHI, LTD., and for his Complaint against the Defendant, FEDEX

FREIGHT EAST, INC., an Arkansas corporation, states as follows:

1. This Court has jurisdiction of this matter based upon diversity of citizenship as contained in 28 United States Code §1332, in that the Plaintiff, DOUGLAS WISE, is a citizen of the State of Illinois and the Defendant, FEDEX FREIGHT EAST, INC., is incorporated in the State of Arkansas, and is a citizen of and has its principal place of business in the State of Arkansas. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$75,000.00.

2. That on May 29, 2008, and for some time prior thereto, the Defendant, FEDEX FREIGHT EAST, INC., was an Arkansas corporation, engaged in the trucking and freight business and traveling in and through the State of Illinois, County of Winnebago and City of Rockford in the course of doing business.

3. That on May 29, 2008, at all times pertinent hereto, Brad Swinson, was an employee, agent or apparent agent of FEDEX FREIGHT EAST, INC.

4. That on or about May 29, 2008, the Plaintiff, DOUGLAS WISE, was a passenger in a 1991 Oldsmobile passenger vehicle being operated by the Plaintiff, AUSTIN FERGE, traveling westbound on Jefferson Street in the City of Rockford, County of Winnebago and State of Illinois.

5. At the foregoing time and place, a FEDEX FREIGHT EAST, INC., truck operated by Brad Swinson, was proceeding south on Second Street crossing its intersection with Jefferson Street, in the City of Rockford, County of Winnebago and State of Illinois,

6. That at the aforesaid time and place said truck ran a red light at the same time the vehicle in which the Plaintiff, DOUGLAS WISE, was a passenger, was

proceeding west on Jefferson on the green light entered said intersection, colliding with the FEDEX FREIGHT EAST, INC., truck and in the process of that collision, going underneath the trailer of the FEDEX FREIGHT EAST, INC., truck.

7. That on May 29, 2008, and immediately before the collision the Defendant, FEDEX FREIGHT EAST, INC.'s, truck being driven by Brad Swinson, had a traffic control device controlling his direction of travel which was red.

8. That on May 29, 2008, the vehicle in which Plaintiff, DOUGLAS WISE, was a passenger was proceeding west on Jefferson Street and proceeded westbound with a green light on the traffic control device and entered said intersection colliding with the FEDEX FREIGHT EAST, INC., truck and in the process of that collision was forced underneath the trailer portion of the FEDEX FREIGHT EAST, INC., tractor/trailer.

9. That on May 29, 2008, at said time and place the Defendant, FEDEX FREIGHT EAST, INC., by and through its' employee, agent or apparent agent, Brad Swinson, failed to stop for the traffic control device controlling its lane of traffic, which was red, and struck Plaintiff's vehicle.

10. That FEDEX FREIGHT EAST, INC., by and through its employee, agent or apparent agent Brad Swinson, was then and there negligent in one or more of the following respects:

a. Failed to obey the instructions of the official traffic control device controlling southbound traffic on North Second Street in violation of 625 ILCS 5/11-305(a);

b. Failed to decrease his speed when approaching and crossing an intersection contrary to and in violation of 625 ILCS 5/11-601(a).

c. Failed to decrease the his speed to avoid colliding with the Plaintiff's vehicle or other vehicles legally on the highway in violation of 625 ILCS 5/11-601(a);

d. Drove his vehicle at a speed which was greater than reasonable and proper with regard to traffic conditions and use of the highway in violation of 625 ILCS 5/11-601(a);

e. Failed to keep a proper lookout for traffic lawfully upon the roadway directly in front of his vehicle or to the east of his motor.

f. Failed to give an audible warning with the horn when such warning was reasonable and necessary insure safety in violation of 625 ILCS 5/12-601(a)

g. Failed to keep his vehicle under proper control.

11. That as a direct and proximate result of one or more of the aforesaid negligent acts and/or omissions of the Defendant, FEDEX FREIGHT EAST, INC., its motor vehicle collided with the motor vehicle in which the Plaintiff, DOUGLAS WISE, was a passenger, resulting in the Plaintiff, DOUGLAS WISE, sustaining severe and permanent injuries, both externally and internally, has cause him great pain and suffering and continues to cause great pain and suffering, and will cause him great pain and suffering in the future. Further, Plaintiff, DOUGLAS WISE, has become liable for large sums of money for medical expenses in endeavoring to be cured and healed of his injuries, had caused and continues to cause him to be impaired from going about his daily affairs as a result of his injuries and has sustained diminished earning capacity.

WHEREFORE, the Plaintiff, DOUGLAS WISE, prays for judgment against the Defendant, FEDEX FREIGHT EAST, INC., an Arkansas corporation, in a sum in excess of \$75,000.00 plus costs of suit.

AUSTIN FERGE and DOUGLAS WISE

BY CLARK, JUSTEN & ZUCCHI, LTD.

/s/Robert H. Clark

BY \_\_\_\_\_

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